

25 MAY 1977

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This is in reply to your letter of 4 May 1977.

It is correct that any person, provided that he is a U.S. citizen or an alien lawfully admitted for permanent residence in the United States, has a right to access to records pertaining to him held by Federal agencies. The right is not absolute, however, for the law provides certain exemptions. Moreover, heads of certain agencies are authorized to exempt categories of information, after publication of these additional exemptions in the Federal Register.

If an individual requests information from a Federal agency on a third party, it is very helpful if the requester provides a notarized release from the person whose records are concerned. Otherwise, every document surfaced would have to be carefully reviewed in order to avoid an unwarranted invasion of the third party's privacy. Essentially, without such a release, we could send the requester only that information already in the public domain--newsclips and the like.

While the courts have carefully avoided establishing any hard and fast rules regarding privacy, preferring instead to balance in each case the public's right to know against the individual's right to privacy, it is generally conceded that the dead have little or no privacy rights. As you point out, however, release of records pertaining to the deceased person could very well violate the privacy rights of his survivors. Without a notarized release from the deceased's nearest surviving relative, we would be required to subject the records to a very careful review and to withhold any information which could abridge the privacy of relatives.

You brought up the examples of Lee Harvey Oswald and the Rosenbergs. Not only were these persons dead, but they were

public figures. Even if they were still alive, release of information concerning their public roles (i.e., Kennedy's assassination or, in the case of the Rosenbergs, their trial on espionage charges) would not be an unwarranted invasion of their privacy under the terms of the Freedom of Information Act--5 U.S.C. 552(b)(6). A person requesting records on a deceased individual would never be given access to more information than would have been released, under the Privacy Act, to the deceased person if he were alive. Depending upon the degree to which the deceased person was a public figure, as well as the extent to which the privacy of survivors was involved, the requester might be given a lot less.

I hope that the above is responsive to your inquiries.

Sincerely,



Gene F. Wilson
Information and Privacy Coordinator

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